

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.140 OF 1998

IIT Capital Services Limited...Petitioners

Vs.

Vatan Dychem (Export) Limited...Company

Ms. Deepa Mani i/b. S.K. Srivastav & Co., for the Petitioners

None for the Respondents.

CORAM: A.M. Khanwilkar,J.

DATE : 4th August, 2005

P.C.:

1. Heard Counsel for the petitioners. None appears for the Respondents, though served. No reply is filed opposing this petition.

2. According to the petitioners to lease agreements were entered into between the petitioners and the respondent company. As per the said lease agreements the petitioners provided plant and machinery to the respondent company on lease. It is the case of the petitioners that the respondent company is in arrears of lease rent since October, 1996. In fact the Respondent company had issued a cheque for Rs.1,40,156/- towards lease rent for two months on 30th September, 1997. Even the said cheque was dishonoured and returned with endorsement "Funds expected, please present again." The petitioners have initiated criminal action with regard to the said cheque. The fact remains that the respondent company remained in arrears of lease rent which is acknowledged debt since October, 1996. The calculation of the outstanding amount is provided in the particulars of clam appended to the petition at Exhibit "F". The total outstanding amount including interest at the rate of 36% p.a. which is agreed under the lease agreement comes to around Rs.22,15,666/-. As no payment was received the petitioners

issued statutory notice on 27th November, 1997 which was duly served on the respondents. By this notice the petitioners called upon the respondents to pay a sum of Rs.16,42,846/- together with interest at the rate of 24% p.a. However, no reply was given to the said notice nor any payment was offered. Eventually the petitioners filed the present petition under Sections 433 and 434 of the Companies Act on 9th February, 1998. This Court before admission of the company petition for winding up had issued notice which was duly served on the respondent company. In spite of service none appeared for the respondent company. By way of indulgence this Court passed a conditional order on 21st July, 1998 providing three months time to the respondent company to deposit the claim amount. That order was duly communicated to the respondent company. The respondent company failed to avail even that opportunity. The admission of the petition has been duly advertised and published. The Respondent company has not bothered to appear before this Court nor has filed any reply controverting the assertions made in the petition. As the assertions in the petition remained uncontroverted and are substantiated by the documents placed on record along with the petition, I have no hesitation in taking the view that the respondent company has failed to rebut the legal presumption arising against it that it is unable to pay its debts. With the said finding the only course open to this Court is to allow this petition in terms of prayer clauses (a) and (b).

3. It is seen that the petitioners had failed to file affidavit of publication. This Court granted time on condition that the petitioners would pay costs and also file

the affidavit of publication within a specified time. The petitioners have complied with the deposit order, but there is some delay. The delay in non-compliance is due to reasons beyond the control of the petitioners. The same is condoned.

4. Suffice it to observe that the respondent company has failed to observe the onus arising out of the legal presumption against it as no reply has been filed controverting the assertions in the present petition. IN the circumstances petition is made absolute in terms of prayer clauses (a) and (b).

(A.M. KHANWILKAR, J.)